

Participation Agreement

Between

The Regents of the University of California for

THE BERKELEY SENSOR AND ACTUATOR CENTER

and

Huawei Technologies, Co, Ltd.

With "Effective Date" of *May 1, 2016*

This Agreement, fully executed when both parties have signed the Agreement, is by and between THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a California Corporation, whose legal address is 1111 Franklin Street, 12th floor, Oakland, CA 94607-5200, acting through its Industry Alliances Office, 2150 Shattuck Ave., 10th Floor, Berkeley, CA, 94704-1610 (hereinafter referred to as "California") and **Huawei Technologies, Co., Ltd.**, having a principal place of business at **Administration Building Huawei Technologies Co., Ltd., Bantian, Longgang District, Shenzhen, 518129, P.R. China** (hereinafter referred to as "Industrial Member"). This Agreement will govern the conditions of membership for Industrial Member in the Berkeley Sensor & Actuator Center ("BSAC").

Whereas, California has established, with partial support from the National Science Foundation, an Industry-University Cooperative Research Center on sensors and actuators (BSAC), and

Whereas, BSAC, through California, may also receive support from governmental sources in addition to the National Science Foundation (NSF), and

Whereas, BSAC requires additional funding to sustain its operations, and

Whereas, Industrial Members have provided support of BSAC in order to secure certain benefits available only through the work of BSAC, and

Whereas, **Huawei Technologies, Co., Ltd.** is desirous of becoming an Industrial Member, and

Whereas, as used in this agreement, "BSAC Researchers" are students and/or employees of UC who are members of the research groups of BSAC, and

Whereas, a primary goal of BSAC is timely and broad scientific dissemination of all worthy scientific results produced by BSAC Researchers for the advancement of science; with venues for such dissemination anticipated to include scientific conferences and other technical meetings, refereed scientific and technical journals, and workshops, and

Whereas, while the information generated by BSAC Researchers may relate to commodities that are controlled under the Export Administration Regulation (EAR) or the International Traffic in Arms Regulation (ITAR), this information is produced through fundamental research performed at the University, and such research is likely to involve persons other than U.S. citizens in its creation and further development at the University, and

Whereas, information about BSAC research activities is distributed to Industrial Members and their representatives without question as to citizenship or Visa status, and without an export license, under the following regulations: 22 CFR §§120.10(a) and §120.11, 15CFR §734.3(b)(3), and 15CFR §§7-734-11.

Now, therefore, the parties agree as follows:

ARTICLE 1: RESEARCH AREAS

1.1 BSAC Researchers will conduct research in the areas of Micro-and Nano-ElectroMechanical Systems (MEMS/NEMS) and Microfabrication including, but not limited to (1) processes, structures, and materials used to make devices, (2) processes to package devices, (3) processes to combine MEMS/NEMS systems with CMOS and other microelectronics, with organic materials, and with molecular nanostructures and, (4) MEMS BIO, communications, microfluidic, micropower, and micro-nano sensor systems. Topics of BSAC research will vary as the field develops and as suggested by the Industrial Advisory Board hereinafter defined.

ARTICLE 2: PROGRAM MANAGEMENT

2.1 Co-Directors of BSAC shall consist of designated BSAC Industry-University Cooperative Research Center NSF Principal Investigators and other faculty of the University of California, as determined by the Co-Directors in their role as a management committee. This management committee shall also include an Executive Director. Co-Directors shall be advised by an Industrial Advisory Board comprised of two representatives of each Industrial Member.

ARTICLE 3: COST

3.1 Industrial Member elects Regular membership category, with N/A projects (for Collaboration Members only), as described in Appendix B. Industrial Member will provide to California an Annual Membership Fee defined in Appendix B to support BSAC. Any change to such fee will not apply to membership periods previously paid, and can only be made by written amendment to Appendix B to this Agreement. Industrial Member shall make initial payment of at least half the Annual Membership Fee upon execution of this agreement, and thereafter annually on the anniversary of the Effective Date.

3.2 Checks payable to **The Regents of the University of California**, indicating the purpose of the payment (“**BSAC Membership**”) should be sent to:

Extramural Funds Accounting
ATTN: Manager
2195 Hearst Avenue, Room 130
Mail Code 1103
University of California
Berkeley, California 94720-1103

Alternatively, provisions for wire transfer payment to Extramural Funds Accounting with purpose indicated (“BSAC Membership”) can be arranged through the BSAC Administrative Contact.

ARTICLE 4: MEMBERSHIP ELIGIBILITY AND BENEFITS

4.1 All corporations and governmental scientific entities, with demonstrated development expertise in BSAC research areas and with legal standing in the U.S. are eligible for membership as “Industrial Member”. The BSAC management committee may, subject to U.S. and State of California law and University of California policy, change or make exceptions to the eligibility criteria.

4.2 Industrial Member will receive the following benefits in consideration of its support. These benefits will extend, upon approval of the BSAC Management Committee, to related companies of Industrial Member who agree to be bound by the terms of this Participation Agreement and who relate through at least 50% ownership-in-common with the Industrial Member:

- a. Each Industrial Member will receive all new and electronically archived BSAC publications, including theses and papers appearing in peer reviewed literature, as they are published, either by electronic means, or upon request, via hardcopy or physical electronic storage media.
- b. Attendance at semi-annual research review meetings held at the UC Berkeley campus to review, assess, critique, and advise on recent, not yet published or publishable, research results. Attendance at these meetings is limited to seven (7) employees of each Industrial Member.
- c. Opportunity to influence the research topics of BSAC through representation on the Industrial Advisory Board (IAB). Representation on the IAB is limited to two employees of each Industrial Member.
- d. Invitation to meetings of California’s College of Engineering Industrial Liaison Program.
- e. The right to use, subject to California’s valid copyright and patent rights, all reports, data, and information made available by BSAC, so long as BSAC is acknowledged as the source of this information, and Prepublication Data is protected according to Article 5.

- f. Early access to intellectual property developed by BSAC in the course of the research conducted using the membership fees of Industrial Members on terms as provided in paragraph 7.1(a).
- g. To the extent permitted by funding agencies, the right to propose and participate in joint research programs, with BSAC Directors, funded by agencies of the U.S. Government. Rights to inventions arising under such sponsorship shall be granted according to paragraph 7.1(b).
- h. Early access to inventions developed from BSAC research programs that were funded solely by agencies of the Federal government or the State of California, see paragraph 7.1(c).
- i. The opportunity to sponsor and fund separate projects with BSAC Directors after mutual agreement. Any joint or collaborative research conducted between the parties shall be defined and governed by such separate Sponsored Project Agreements. Intellectual property rights to inventions arising under such sponsorship will be defined by such separate agreement as stated in paragraph 7.1(d).
- j. The opportunity to send, with separate agreement and fees, a Visiting Industrial Fellow to BSAC for in-residence research, sponsored and advised by a specific BSAC co-Director.
- k. Attendance, with prior approval, at monthly technical BSAC internal project specific researcher meetings.
- l. The rights to membership in the Berkeley Microfabrication Laboratory Affiliates (BMLA) program to access the microfabrication facility, under separate agreement with additional fees and under terms more favorable than offered to non-BSAC members.

ARTICLE 5: CONFIDENTIALITY

5.1 During the period of Industrial Members' participation in BSAC under the terms of this Agreement, California may provide Industrial Member certain Prepublication Data and Invention Disclosures (collectively "BSAC Data") related to the research activities of BSAC Researchers. As used herein, Prepublication Data means results of research including but not limited to that presented by BSAC to Industrial Member at BSAC research review meetings, that has not yet been published by the researchers at the time of such presentation. Prepublication Data may be oral, visual, or written, and may also include information provided or delivered by electronic means. If written, it shall be clearly marked "Prepublication Data." If disclosed orally or visually, the material considered Prepublication Data shall be identified at the time of disclosure and shall be so designated in writing to Industrial Member within thirty (30) days of its original disclosure. As used herein, Invention Disclosure means written descriptions of inventions or discoveries provided by California to Industrial Member.

5.2 Industrial Member will maintain BSAC Data (comprising Prepublication Data and Invention Disclosures) in confidence for one (1) year from the date such BSAC Data is disclosed, even if Industrial Member is no longer a member of BSAC.

5.3 With regard to BSAC Data, Industrial Member agrees:

- a. to receive Prepublication Data in order to provide advice and direction as to BSAC research programs;
- b. to receive Invention Disclosures for the sole purpose of evaluating its interest in obtaining a commercial license from California;
- c. to safeguard BSAC Data against disclosure to others with the same degree of care as it exercises with its own data of similar nature; and
- d. not to disclose BSAC Data to others (except to its employees, agents, or consultants who are bound to Industrial Member by a like obligation of confidentiality) without express written permission of California except that Industrial Member shall not be prevented from using or disclosing any of the BSAC Data which:
 - i. Industrial Member can demonstrate by written record was in its possession prior to receipt from California;
 - ii. is now, or becomes in the future, public knowledge other than through acts or omissions of Industrial Member;
 - iii. is lawfully obtained by Industrial Member from sources independent of California;
 - iv. is required to be disclosed by operation of law, provided that California has received advanced written notice of the proposed disclosure by the Industrial Member; or
 - v. is disclosed by California to a third party without a nondisclosure obligation.
 - vi. is independently developed by or for Industrial Member

To the extent such does not infringe California's valid copyright and patent rights, and subject to Industrial Member's obligation of nondisclosure set forth in paragraph 5.2, Industrial Member shall be free to use for any purpose any intangible residual ideas, concepts, know-how or techniques (as distinguished from the tangible implementation of such know-how, ideas, concepts and techniques) contained in California's BSAC Data (the "Residual Information") retained in the unaided memories of Industrial Member's employees. The marketing of products or services which inherently disclose Residual Information shall not be deemed a publication or disclosure of Confidential Information.

It is further agreed that the furnishing of BSAC Data to Industrial Member will not constitute any grant or license to Industrial Member under any legal rights now or hereinafter held by California.

ARTICLE 6: TERM AND TERMINATION

6.1. This Agreement will remain in effect for five (5) years from Effective Date or until terminated by either party, whichever occurs first. Either party may terminate the Agreement for convenience by providing written notice of such termination (Notice of Termination). Termination will be effective (Effective Date of Termination) ninety (90) days from receipt of Notice of Termination. Industrial Member shall pay Membership Fees up to but not beyond Effective Date of Termination. If the Agreement is terminated, California will refund to Industrial Member any remaining portion of its paid membership fee, pro-rated from the Effective Date of Termination. The provisions of Article 5, Confidentiality, will continue to be binding following termination.

ARTICLE 7: LICENSING

7.1. All inventions conceived and first reduced to practice in the course of research conducted by BSAC under this Agreement, and all patent rights thereto, will belong to California subject to California's legal obligations under Federal and State law and contracts to which California is bound. Notice of such inventions will be provided as outlined in Appendix A. Rights to such inventions will be made available to Industrial Members by California's Office of Technology Licensing, subject to California's legal right to do so, as follows:

a. Inventions solely funded by membership fees.

When a BSAC research project is funded solely by membership fees, all Industrial Members who are BSAC members at the time an invention is disclosed will receive a time limited, 90-day, first right to share patenting costs of such invention on a prorated basis with all other Industrial Member participants and if such patenting effort is successful, upon issuance of such patent, receive a nonexclusive paid up in-perpetuity license to such patent. If after 90 days no Industrial Member has executed its right to prorated patenting cost sharing, California will be free to dispose of rights to such inventions in accordance with California's policies, with no further obligation to Industrial Members.

b. Joint Participation in U.S. Government Funded Research.

When a BSAC research project is funded solely by a Federal/State Government source and California and an Industrial Member are listed as co-participants, California will notify Industrial Members that are sub-awardees on such a grant when inventions are conceived and first reduced to practice using funds from the grant. Under the terms of this Agreement, California will offer to such Industrial Members who are members at the time of Invention Disclosure, a time-limited, 90-day first right to negotiate an exclusive or nonexclusive, royalty-bearing license or option to these inventions, provided the grant of such rights are consistent with the granting agency. If sub-awardee Industrial Member declines this offer, then California will provide Notice of Invention to all Industrial Members and such rights to license will be disposed of in accordance with California's policies with no further obligation to sub-awardee.

- c. Research projects fully funded solely by Federal/State Government sources (DARPA; NASA; NSF; Caltrans, etc.).

When the sole source of funds for a BSAC research project is from Federal/State Government sources, BSAC members' rights to intellectual property developed under these programs will be governed by University of California or Federal/State policies in effect at that time. BSAC members who are members at the time of Invention Disclosure will be provided a time-limited 90-day right to negotiate royalty-bearing licenses or options.

- d. Industrial Member Solely Funded Research Project.

If an Industrial Member sponsors a BSAC research project, and pays the full cost of such research, Industrial Member's rights to inventions conceived and first reduced to practice in the course of the solely funded research project shall be governed under separate Sponsored Project Agreements.

- e. CITRIS-funded Research.

If a research project or researcher(s) are entirely funded from Center for Information Technology in the Interest of Society (CITRIS) contributions from a CITRIS Corporate Member that is also a BSAC Industrial Member, inventions conceived and reduced to practice in the course of such research shall be disposed of by California according to the CITRIS Intellectual Property Policy, with the guidance of the CITRIS Executive Committee.

The above schedule of licensing provisions does not convey any express or implied rights in any other intellectual property of California except for the specific invention considered for licensing.

ARTICLE 8: PUBLICATION

8.1. Subject to Article 9 below, California will have the right to copyright, publish, disclose, disseminate and use, in whole or in part, any data or information received or developed under this Agreement. Copies of any proposed publication will be provided to Industrial Member concurrently with submission for publication, for Industrial Member's review. During this review period, Industrial Member may also identify patentable inventions for which it requests that California file for patent protection. In such case, California may delay publication up to an additional sixty (60) days in order to file such patent application.

ARTICLE 9: USE OF NAME

9.1. Except as required by law, Industrial Member agrees not to use the name "The Regents of the University of California," the name of any campus of the University of California, or any abbreviation or derivative thereof in any advertisement, publicity, or other release, with reference to this Agreement or any product or service resulting from this Agreement, without the prior written consent of California. Except as required by law, California agrees not to use the name of Industrial Member or any abbreviation or derivative thereof in any advertisement, publicity or other release, with reference to this

Agreement or any product or service resulting from this Agreement, without the prior written consent of Industrial Member.

ARTICLE 10: NOTICES

10.1. Notices under this Agreement shall be rendered to:

For California:

Official Notices: Industry Alliances Office
University of California
2150 Shattuck Ave., 10th Floor
Berkeley, CA 94704-1610
Attn: Associate Director
(510) 642-5829
lrpierson@berkeley.edu

BSAC Administrative Contact: BSAC Executive Director
University of California
497 Cory Hall #1774
Berkeley, CA 94720-1774
(510) 643-6690
(510) 643-6637 fax
execdirector@bsac.berkeley.edu

For Industrial Member:

Official Notices: Liang Peng
Senior Director
2330 Central Expressway, Santa Clara, CA 95050
408-330-4513
liang.peng@huawei.com

Financial Contact: Huawei Technologies Co., Ltd.
Bantian, Longgang District
Shenzhen 518129
Attn: Attn: Lili 李莉
D[d3-F2A-1303]
0755-28425123/18681485801



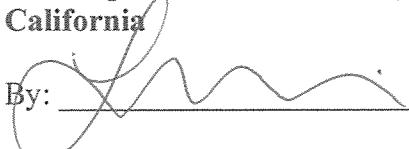
ARTICLE 11: ENTIRE AGREEMENT

11.1. This Agreement states the entire contract between the parties in respect to the subject matter of this agreement and supersedes any previous or contemporaneous written or oral representations, statements, negotiations, or agreements. This Agreement may be modified only by written agreement executed by authorized representatives of both parties.

ARTICLE 12: GOVERNING LAW

12.1 This Agreement shall be interpreted in accordance with the laws of the State of California without regard to its conflict of laws provisions. The parties expressly waive the right to trial by jury in any matter which arises under this Agreement.

In witness whereof, the parties hereto caused this Agreement to be executed by their duly authorized representatives as of the day and year first above written.

Huawei Technologies, Co., Ltd. By:   Date: <u>April 13, 2016.</u>	The Regents of the University of California By:  Industry Contracts Manager Industry Alliances Office University of California Berkeley, CA 94704-1610 Date: <u>April 1, 2016</u>
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Appendix A

Notice of Invention Procedure

When a researcher discloses to the Office of Technology Licensing (“OTL”), an invention (“Invention Disclosure”) developed under paragraph 7.1(a)-(d) of the Agreement, such disclosure to be timely, meaning not more than twelve (12) months following first enabling description of subject invention to any Industrial Member, the following procedure will be used to notify each Industrial Member (“Notice of Invention”):

1. The Industrial Member contact person for the company will be notified via e-mail or fax and provided:
 - a) The title of the invention
 - b) The name of the inventor(s)
 - c) The BSAC program, paragraphs 7.1(a)-(c) under which the invention was developed
 - d) A brief non-enabling description of the invention
 - e) The date the 90-day review period expires
2. The sending of this e-mail or fax will initiate the 90-day review/decision period to obtain licensing rights.
3. If the Industrial Member wishes to receive the complete description of the Invention, they will so respond to OTL by e-mail or fax and provide a company Fed-Ex account number. Within five working days of receipt of the request for more information a complete copy of the invention description will be sent via Fed-Ex to the Industrial Member contact person.
4. If the Industrial Member wishes to initiate discussions for an option/license to the Invention, they must notify OTL in writing within the period specified in 1(e) of this Appendix A.
5. Any Notification of Invention developed under separate research programs sponsored solely by an Industrial Member (paragraph 7.1(d)) will be sent by OTL via Fed-Ex to the individual in the Industrial Member company as specified in the separate research agreement that governs the research program.

Appendix B

Annual Membership Fee

1. Annual Membership Fee for *Regular Member* (RM) shall be \$50,000 until changed by amendment by both parties of this Appendix B.
2. Annual Membership Fee for *Collaboration Member* (CM) shall be \$135,000 and shall include all rights and obligations of IM as defined in this Agreement and shall further entitle CM to a BSAC *Collaboration Membership Supported Project* (PROJECT) as defined and documented by the BSAC Faculty co-Director who will advise the PROJECT. Each such PROJECT shall include best efforts of one student researcher-equivalent year, shall have a PROJECT period of one year from PROJECT start date, and shall be subject to the IP terms for all *Member Fee Supported Projects* as provided in paragraph 7.1.a of this Agreement.
3. CM shall have the option to support *additional* PROJECT(s) defined by BSAC faculty co-Director(s) for \$105,000 Membership Fee per PROJECT. Each *additional* PROJECT shall include best efforts of one additional student researcher-equivalent year.
4. CM's Membership Fee shall be corrected to account for *separately paid* Regular Membership Fee (if appropriate).
5. If CM should terminate Membership prior to end of PROJECT(s) period, Article 6 of this Agreement shall be amended to reflect that no refund shall be made by California for unused CM Membership Fees or uncompleted PROJECT(s).
6. Annual Membership Fee shall not be retroactively changed nor changed for future periods except on Anniversary of Effective Date.
7. Administrative fees withheld by California from Membership Fee paid to BSAC:

Industrial Member's Membership Years*	Percentage of Membership Fees Used for Administrative Fee
1	0%
2	0%
3	0%
4	8%
5 and Above	15%

*This figure represents the cumulative number of Industrial Member's Membership Years after July 1, 2004 in the BSAC program, whether or not those Membership Years are consecutive.

